

Raymond Planning Board Minutes

July 09, 2009

Approved 08/06/09

Place: Raymond High School; Media Center

Call to Order: 7:36 p.m.

Members Present: Jonathan Wood, Chairman; Carolyn Matthews, Vice Chairman; Jim Kent, Secretary; Bill Hoitt, Selectmen's Ex-Officio; Bill Cantwell, Gretchen Gott; Doug Vogel.

Staff Present: Ernest Cartier Creveling, Community Development Director; Walter Mitchell, Legal Counsel (only present for the Thibeault hearing); Robert Price, Planning Technician.

Pledge of Allegiance

Approval of Minutes

The Board agreed to table the approval of minutes until its next meeting due to time constraints.

Thibeault Quarry

Continued from 05/21/2009; Application #2007-002: An application for an Amended Excavation Plan has been submitted by Thibeault Sand & Gravel, LLC, on land known as Nashua River Land Corporation, to amend their Excavation Permit to add a quarrying operation. The properties are shown on Raymond Tax Map 32, Lots 43 and 68; Map 37, Lot 2; and Map 38, Lots 12 and 13; accessed via NH State Route 27.

Carolyn Matthews stated she must recuse herself from this case.

Members Sitting for this Hearing: Jonathan Wood; Jim Kent; Bill Hoitt; Gretchen Gott; Doug Vogel; Bill Cantwell.

Community Development Director Cartier Creveling stated the Planning Board has hired a new law firm for this case. He introduced Walter Mitchell of Mitchell Municipal Group.

Walter Mitchell stated his understanding is that the Rockingham County Superior Court invalidated the 2005 and 2007 gravel excavation permits. If the applicant wants to pursue gravel excavation, the applicant will need to file a new excavation permit. The quarry application was filed with the Board in February 2007. It has been characterized as an amended permit. He stated his office has spoken with John Bisson, legal counsel for the applicant. Mr. Bisson indicated to him that the applicant is interested in clarifying this application to remove the word "amended." Mr. Mitchell stated the question for the Board is would review of the quarry application have proceeded any differently if that application was brought before the Board as a stand-alone application as opposed to an amended application.

John Bisson, Legal Counsel for Thibeault Sand & Gravel, LLC stated it has been the position of the applicant for several meetings that volumes of information have been submitted at this point. Members of the public have had ample opportunity to voice their opinions, and ample discussion

has taken place regarding traffic, dust, noise, etc. He stated the applicant feels the Board needs to render a decision at this point.

Mr. Bisson continued his understanding, resulting from a submission from John Vetne, an abutting resident and legal counsel representing several abutters, is that there is a suggestion that this process was handled with a less rigorous standard of review because it was captioned as an amendment. Mr. Bisson stated he does not believe the record that has been established thus far with this case suggests this is true. He stated the Board has gone to great lengths to keep the excavation proceedings separate from the quarry proceedings.

Mr. Bisson continued, at the last meeting, it was mentioned how the applicant brought forth the quarry application as an amendment. He added the applicant made representations about what the New Hampshire Department of Environmental Services (DES) said and required. Mr. Vetne, since that meeting, had a conversation with DES and has submitted information suggesting that the applicant was not being forthcoming, correct, or was hiding information. Mr. Bisson stated the application was brought forth as an amendment because the applicant's understanding was that DES required it to be an amendment. He noted it was originally going to be filed as a separate application, but this was changed due to comments received from DES. He stated whether this was a misunderstanding or not does not take away from the fact that the application has been reviewed as a completely separate application. Mr. Bisson stated he would like to suggest that the Board allow the applicant to amend the application to remove the word "amendment."

Vince Iacozzi of Thibeault Sand & Gravel, LLC stated when the quarry hearings were first set to begin, if the Board recalls, they had to be aborted and re-noticed due to a flaw in abutter notice at the time (July 2007). He stated the applicant went to great lengths to ensure everyone was notified of the quarry application. He added in 2008, DES held, for the first time in the State of New Hampshire, an Alteration of Terrain hearing. Again, all the abutters were notified of this hearing. He noted the permit issued by DES was treated, and is on record, as a completely new permit, with a completely new permit number (WPS-8237). He stated he feels all the regulations have been adhered to, and the State has issued an Alteration of Terrain permit for this quarry.

PUBLIC COMMENT

John Vetne stated he is the attorney for most of the abutters in attendance, adding they have formed an organization called the Upper Lamprey Neighbor's Group. He stated he does not feel the applicant should spend unnecessary time doing again what has already been done. He stated there is a substantial record that has been made for the quarry application. Amending this application to call it an original application is not quite as simple as it is being made to be. He stated what is most troublesome about not starting anew, in some measure, is that there are several instances where the applicant referred to studies that were conducted as part of the excavation permit process. He stated he does not want the Board to prevent the abutters from having a meaningful opportunity to present their opposition to the Board.

Mr. Vetne also stated if the word "amendment" is to be dropped, then the record needs to be sifted through, and it needs to be completely clear which records are to be considered pertinent to the quarry application, and which are pertinent to the defunct excavation permit.

Fred Kelly, Chairman of the Town of Candia Board of Selectmen, stated the impact on the Town of Candia, especially in regards to traffic, will be ferocious. He stated the Town of Candia Board of Selectmen has taken a vote to officially oppose this application.

Jonathan Wood requested a copy of the minutes where the Town of Candia Selectmen took this vote, as referred to by Mr. Kelly. Mr. Kelly informed the Board he would provide a copy of the minutes where this vote took place.

Dick Snow, a member of the Board of Selectmen and Conservation Commission in the Town of Candia stated he does not have much knowledge of the application, but he does have concerns both from the conservation perspective as well as with the applicant's history. He stated he would like time at a future meeting to ensure that his concerns will be heard by the Board.

Walter Mitchell and John Bisson engaged in a brief back-and-forth discussion regarding the question posed by Mr. Vetne, regarding the issue of documents regarding the quarry application being clearly identified.

Mr. Cartier Creveling stated the he thinks there are questions pertaining to some studies/information that the Board requested where the applicant referred to older studies to provide answers. Mr. Bisson stated the Board can rely on previous studies, and has done so.

Mr. Vetne stated a readily identifiable record is needed. Mr. Bisson is asking the Board to take notice of certain documents from the past. To the abutters, this is creating a stealth record. If the applicant wants something in the past to be considered by the Board, then the applicant should specifically identify each historical item it would like the Board to consider. Then, the adequacy of the final product can be assured.

Mr. Mitchell stated his recommendation to the Board would be to ask the applicant to provide a list of documents that have been submitted to the Board that they believe is pertinent for the Board's consideration. Therefore, from this point forward, everyone will know what is pertinent. This list can be supplemented by the abutters or the applicant.

Gretchen Gott stated if the Board drops the word "amendment" from the application, what becomes of the status of items not completed under previous permits. For instance, reclamation is a large issue on this site. Mr. Mitchell stated whereas the Court used the word remand, the excavation permit was "dead on arrival." Mr. Bisson agreed, adding the conditions linked to that excavation permit were eliminated as well.

Doug Vogel stated as a result of his newness to the Board, he was never aware that the excavation permit was a separate application. He added had he known this, it would not have changed anything for him. Dropping the word "amended" in his view, will not have an impact on what the Board has done.

Bill Cantwell stated he agrees with this, but he would like to also see a clean record for complete review. He stated he would like to see everything that has been submitted cleaned up to reflect the change.

Bill Hoitt stated he, too, has only been on the Board for a few months, and he stated he also has no problem with dropping the word “amended” and carrying on.

Gretchen Gott stated she agrees that the record needs to be clarified. She also noted for the excavation permit, different fuels and lubricants were discussed. She stated this has not been discussed as a requirement for the quarry. Mr. Iacozzi stated the plans note that bio-fuels and lubricants are the only fuels and lubricants allowed on this site.

Jim Kent stated he would be more comfortable dealing with a new record that clearly substantiates this application as a stand-alone application. He stated he would like to see the list of documents, as was discussed.

Jonathan Wood stated his perspective is that the dropping of the word “amended” seems to be acceptable to the Board, the applicant and the abutters.

Jonathan Wood stated the applicant should create a list of all documentation submitted to the Board pertinent to this application, from the applicant’s perspective. He clarified that he is not asking for re-submittal of anything at this time, just a list identifying the documents.

Gretchen Gott stated she, too, would like the Planning Board to list what they have asked for, the Technical Review Committee to list what they have asked for, and also for the abutters to list what they have asked for.

Jim Kent stated any references on the plan that refer to the excavation operation need to be removed.

Mr. Vetne stated to verbally move to remove the word “amended” on all the documentation will serve to create confusion. Mr. Mitchell stated he does not see much chance for confusion going forward.

MOTION: Doug Vogel made a motion that the Planning Board hereby removes the word “amended” from Application #2007-002 for a proposed quarrying operation. Review on this application shall proceed from this point forth as though the application is a stand-alone application. Bill Cantwell seconded. The motion passed with a unanimous vote of 6-0-0.

Jonathan Wood asked how quickly Mr. Iacozzi could provide the list of documents to the Board. Mr. Iacozzi replied he could get it completed by July 31, in time for the first Board meeting in August.

Mr. Wood clarified that the next meeting will focus on the list of documents. The Board will review that list, so everyone is aware of what is on the list. Then, the Board will hold a work session on another date to break down the list.

MOTION: Gretchen Gott made a motion to continue this hearing to August 6, 2009 at 7:00 p.m. at Raymond High School. Doug Vogel seconded. The motion passed with a unanimous vote of 6-0-0.

Promised Land Crossing Site Plan – Extension Request

A request has been submitted by Northpoint Engineering, LLC on behalf of BenAsh Holdings, LLC for a one year extension of the site plan approval, originally granted by the Raymond Planning Board on July 21, 2005, for a project known as “Promised Land Crossing.” The property is shown on Raymond Tax Map 23, Lot 52; Main Street/Old Fremont Road Extension.

Members Sitting for this Hearing: Jonathan Wood; Carolyn Matthews; Jim Kent; Bill Hoitt; Gretchen Gott; Doug Vogel; Bill Cantwell.

Kevin Leonard of Northpoint Engineering, LLC presented the approved site plan to the Board, giving them a brief overview and update. He noted in the summer of 2005, work began on the site, and footings were partially poured. Not long after work began, the applicant ran into financing difficulties as well as finding tenants for the office buildings. Mr. Leonard explained that Tim Peloquin, owner of Promised Land Survey and also BenAsh Holdings, LLC intends to relocate his office, currently situated in Londonderry, to this location. He stated Mr. Peloquin, at this time, is awaiting both the economy to turn around, and for tenants to occupy the proposed building.

Mr. Leonard stated in an effort to keep everything current, the septic was re-approved by the Department of Environmental Services, and reaffirmed water availability with the Town’s Water Department.

Jonathan Wood reviewed the Notice of Decision from July 21, 2005. He asked the status of the following items:

1. *Performance Agreement signed no later than August 22, 2005.* Mr. Leonard gave a copy of the signed Performance Agreement to Mr. Wood.
2. *Bond in an amount to be determined by the Public Works Director for improvements.* Community Development Director Cartier Creveling explained the typical process is that a bond is posted when the applicant gets ready to get a building permit.
3. *Conditions must be met and substantial improvements made to the site or this site plan approval will terminate on July 21, 2006.* Mr. Wood noted the Board will come back to this issue.
4. *All State permits to be submitted to the Planning Board office prior to a building permit being issued.* Mr. Wood noted this has been resolved.

5. *All fees, including but not limited to, legal fees, plan recording fees, site plan/subdivision fees, to be paid in full prior to a building permit being issued.* Mr. Cartier Creveling noted this has been resolved.
6. *Plans to be signed and stamped by a Licensed Land Surveyor.* Planning Technician Price noted this issue has been resolved.

Gretchen Gott asked when work was last done on the site. Mr. Leonard replied work began in the summer of 2005, and stopped while waiting for financing issues to be resolved, as described earlier. In the summer of 2007, the Code Enforcement Officer sent Mr. Peloquin a letter requesting that the site be stabilized, as Mr. Peloquin was uncertain how long the site would remain open and disturbed.

Gretchen Gott stated during the original approval, the abutters and the Planning Board had equal concern with landscaping and buffering. She stated she is concerned for the abutters that have had to look at this site for the last four years. She asked what can be done for the abutters.

Bill Cantwell asked if any complaints have been received by the Town regarding the condition of the site since the notice was sent out for this hearing. Mr. Cartier Creveling stated he has not received any complaints.

Carolyn Matthews asked if it would be possible to place hay down on the site in an effort to keep the dust levels down.

Jim Kent brought up item #3 on the 2005 Notice of Decision: *Conditions must be met and substantial improvements made to the site or this site plan approval will terminate on July 21, 2006.* He asked what makes the approval valid today with this condition and the condition of the site. Mr. Cartier Creveling stated the law was changed at some point to create two levels of performance: active and substantial development, and substantial completion. Once you reach active and substantial development, you are guaranteed an additional three years to reach substantial completion.

Jonathan Wood polled the Board to determine whether or not the site should be stabilized with live growth.

POLL RESULTS

Jim Kent – Yes

Gretchen Gott – Yes

Bill Hoitt – No

Bill Cantwell – No

Doug Vogel – No

Carolyn Matthews – Yes

Jonathan Wood – Yes

Mr. Leonard stated putting loam down will lead to seed, and he does not think this is appropriate. He suggested simply putting hay down on the site with a tacking solution to ensure it sticks. Mr. Wood responded that there are several grass mixes available that should take well, and would be adequate.

The Board requested that stabilization of the site take place by November 01, 2009.

PUBLIC COMMENT

There was no public comment.

MOTION: Carolyn Matthews made a motion to grant a one-year extension, as requested by Tim Peloquin/BenAsh Holdings, LLC for the project known as Promised Land Crossing, originally approved July 21, 2005. Article IV, Section II, Item 5 of the Town of Raymond Site Plan Review Regulations, "Abandonment of Plan," which allows only a 60-day extension, has been waived to allow the time frames defined by the extension granted July 09, 2009. The property is shown on Raymond Tax Map 23, Lot 52; Old Fremont Road Extension and Main Street.

The following conditions shall apply:

1. The conditions of approval designated as conditions precedent must be fulfilled by August 10, 2009, and confirmed in writing by the Raymond Community Development Director, unless otherwise specified, or this approval shall be deemed abandoned, unless the applicant returns to the Planning Board. The following are conditions precedent:
 - a. A new Performance Guarantee Agreement shall be executed between the Town of Raymond and the Applicant within 30 days of the date the requested extension was granted by the Planning Board (**July 09, 2009**). This Performance Agreement shall incorporate the following conditions from the original approval dated July 21, 2005: ***(Note: Failure to execute the required agreement will result in plan approval revocation)***:
 1. Estimates for all improvements shall be provided by Applicant for review and approval by the Raymond Public Works Director or his designee. These estimates will be utilized to establish an inspection escrow account (equal to 4% of the estimated cost of improvements), which must be in place with the Town of Raymond prior to start of any site work. Additionally, these estimates will be used as the basis for computing the Surety/Performance Bond to be provided by Applicant in favor of the Town of Raymond prior to issuance of a Certificate of Occupancy by the Raymond Code Enforcement Officer. Surety/Performance Bond values shall be based upon the value of unfinished work at the time of issuance of said Certificate of Occupancy plus a 10% contingency;
 2. Proof that all State and local permits are still valid must be submitted to the Community Development Department;

3. All fees, including but not limited to, legal fees, plan recording fees, site plan/subdivision fees, to be paid in full prior to a building permit being issued.
2. Water connection must be established by May 26, 2010, or another approval from the Public Works Director will be required.
3. The site must be stabilized to prevent dust dispersion, with live growth, by November 01, 2009.
4. The following items must be completed to constitute “substantial completion of the improvements” pursuant to (RSA 674:39):
 - a. Completion of improvements as represented on the approved site plan.

The motion was seconded by Bill Cantwell. The motion passed with a vote of 5-2-0, with Bill Hoitt and Doug Vogel opposed.

I.C. Reed Site Plan

Application #2008-022 – An application for Site Plan Review has been submitted by Jones and Beach Engineers, Inc. on behalf of I.C. Reed & Sons, Inc. to renovate an existing building for office space, and construct an associated parking area. The applicant was granted a variance for this use on January 10, 2007 by the Zoning Board of Adjustment. The property is shown on Raymond Tax Map 28-2, Lot 54; 9 Evans Drive.

Members Sitting for this Hearing: Jonathan Wood; Carolyn Matthews; Jim Kent; Bill Hoitt; Gretchen Gott; Doug Vogel; Bill Cantwell.

Carolyn Matthews disclosed that she is good friends with Carl “Brad” Reed and his wife. She noted she does not believe this will interfere with her ability to serve on this case in an unbiased manner.

Community Development Director Cartier Creveling stated the application can be accepted as complete for review purposes.

MOTION: Bill Cantwell made a motion to accept application #2008-022 as complete for review purposes. Carolyn Matthews seconded. The motion passed with a unanimous vote of 7-0-0.

Joe Coronati of Jones & Beach Engineers, Inc. introduced the project to the Board. He noted I.C. Reed owns both Tax Map 28-2, Lot 54 and Lot 55. He noted Mr. Reed has owned one of the lots since 1961, and the other for the last few years. He also noted that the Zoning Board of Adjustment issued a variance to Mr. Reed in 2007 allowing him to use the property as a commercial property despite its residential zoning. He added that the site has had a longstanding history as a commercial site.

Mr. Coronati noted one of the conditions on the variance was to install a fence to provide buffering between Mr. Reed and the abutting properties. He noted this fence has been installed.

Mr. Coronati also noted that buffering will need to be planted to meet the residential/commercial buffering requirements.

Mr. Coronati explained the purpose of the application is to obtain site plan approval for the use of the second lot, which is Lot 54. The home that existed on the property was renovated into an office space.

Mr. Coronati explained that the last two flooding events have caused severe erosion to the edge of the riverbank. He explained Mr. Reed obtained a Department of Environmental Services Shoreland Permit to construct a berm and stabilize the riverbank. Also, certain parts of the site will be abandoned from use as part of the approval. These areas will be loamed and seeded, and allowed to return to nature.

Jonathan Wood asked that the small shed by the river is used for. Mr. Coronati replied it is used to store small metal parts, bolts and hardware. Mr. Wood asked why this shed is not being relocated as part of the plan. Brad Reed replied that the shed is storage for items that are not used often, but are still needed. He stated they have not gotten far enough with their plan to consider moving the shed yet. Mr. Wood stated since the area will be reseeded, it would make sense to relocate the shed out of the area.

Jim Kent asked if the utility pole in the same location would be moved. Mr. Reed replied his long-term goal is to move everything out of the area. However his intention is to start with the most threatening items first, then move on to the less-threatening items.

Gretchen Gott stated she has never seen an approved site plan for this property. Mr. Cartier Creveling explained there is no site plan for this property. This project is part of the effort to create a site plan for the property. She stated she is glad to see the applicant taking steps to correct the fact that there is no site plan. She added that she has concern with the location where trucks are currently parking.

The Board agreed that a site walk needs to be held on this site.

MOTION: Carolyn Matthews made a motion to hold a site walk on this property on July 21, 2009 at 6:30 p.m. Bill Cantwell seconded. The motion passed with a unanimous vote of 7-0-0.

MOTION: Bill Cantwell made a motion to continue this hearing to September 3, 2009 at 7:00 p.m. at Raymond High School. Jim Kent seconded. The motion passed with a unanimous vote of 7-0-0.

Other Business

Carolyn Matthews stated the ZBA heard a case involving impact fees. She stated it was mentioned by Code Enforcement Officer Richard Mailhot that he would like to go before the Planning Board to discuss impact fees this fall.

Carolyn Matthews stated she wrote up a script for a presentation for Raymond Community Television regarding the Master Plan. She requested comments from the Board on the script before finalizing it.

Jonathan Wood noted the Nottingham Planning Board will be having a guest speaker September 15 regarding building on private land and roads.

Gretchen Gott requested that notice be issued for the Southern NH Planning Commission vacancy. She expressed a desire for the vacancy to be filled in time for the upcoming August meeting.

Adjournment

MOTION: Doug Vogel made a motion to adjourn. Bill Cantwell seconded. The motion passed with a unanimous vote of 7-0-0. The meeting adjourned at 10:11 p.m.

Respectfully Submitted,

Robert Price
Planning Technician